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Abstract

In the spring of 1968, a research seminar was held at New York University's School of Law for the purpose of developing a basic rationale for university regulation of student conduct that would provide students with as much freedom as possible in the pursuit of their educational objectives. This document, prepared by 16 students and 4 faculty members, is a product of the seminar. Chapter 1 discusses the role of the university and student dissatisfactions which coalesced and erupted into activist demonstrations during the 1960's. Chapter 2 presents 3 commonly held theories on student discipline and offers a rationale for a more relevant disciplinary process. Chapter 3 examines the question of student rights and responsibilities in the modern university context. While pointing out that academic freedom in the fullest sense of the expression is indispensable to the existence of the university, this chapter defines the range and scale of sanctions available to the disciplinary authority within a university, and outlines activities limited or forbidden to students, for violations of which a disciplinary sanction may be imposed. Chapter 4 presents recommendations for the establishment of rule-making authority and of judicial capacity in relation to matters of student conduct and discipline. A selected bibliography is appended. (WM)

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Proposed Codes
With Commentary

STUDENT CONDUCT

and

DISCIPLINE PROCEEDINGS

in a

UNIVERSITY SETTING

NEW YORK UNIVERSITY
SCHOOL OF LAW

AUGUST 1968

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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Introduction

In the spring of 1968 a Research Seminar on Student Conduct and Discipline was offered at New York University School of Law. The purpose was to develop a basic rationale for university regulation of student conduct that would allow to students as much freedom as possible in the pursuit of their educational objectives. The sixteen students and four faculty members whose names are listed below identified the problem areas, prepared background papers, and worked through four drafts in coming to the final product that follows.

All participants in the seminar have signed the report, but of course each member remains free to disagree with particular provisions.

The document is not intended to present a model code complete in all respects for any college of New York University or for any other university. It is intended to raise the principal issues and to suggest possible—we think desirable—solutions to those questions.

We hope it may prove as useful to others as it has been stimulating to us to subject these questions to searching analysis by a group of keenly interested individuals.

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Chapter One

The University Community In A Changing Society

The physical and biological sciences have heightened man's understanding of the world about him; and the social sciences have enlarged man's understanding of his fellow man with whom he lives in ever-closer proximity. Yet vexing uncertainties remain that invite skeptical inquiry about the validity of currently available information, for we can no longer be confident that today's knowledge will be tomorrow's truth.

To meet this challenge the university is called upon to perform ever more important functions in today's increasingly complex world. Thus far the response of society has been to accord the university and its community—faculty, students, and administrators—a position of special esteem and unique freedom to facilitate the accomplishment of its mission. The corresponding obligation of the university is to fix high goals and strive to achieve them. The university's aims must be the pursuit of truth; the advancement and transmission of knowledge; and the supply of related community services. The most important single measure of a university's excellence is the intellectual growth of its students through their initiation into the life of the mind, their commitment to the use of reason in the resolution of problems, and their development of technical competence and intellectual integrity.

The best paths to these goals are not readily identified. The pursuit of truth in a setting of free inquiry is an uneasy quest amidst the modern university's trappings of corporate structure, extensive landholdings, computerized business management, intricate bureaucracy, and general bigness.* But the needs of society and the demands of students and faculty to retain their

individual identities are crucial. Ways must be found to preserve and enlarge these values.

Once a university could flourish wherever its sometimes peripatetic scholars and students met. Even in the latter part of the nineteenth century Mark Hopkins could talk of education in terms of a teacher and a student at opposite ends of the same log, but that figure of speech is no longer meaningful. Contemporary demands for libraries, research laboratories, and stable institutional relationships ordinarily require fixed locations, prescribed periods of study, and predictable curricula. The university now includes, not only the community of scholars—faculty, students, and researchers—but as well the administrators who play an increasingly important role. But it must ever be remembered that the administrative function is one of facilitation, particularly the loosening of barriers to effective communication within the community of scholars. The less obtrusive the mechanics of administration the more successful its performance.

The university must aim to assist each student to realize his potential for personal fulfillment and for the maximization of his own contribution to the society in which he must ultimately take his place. The means to this end have been much discussed in terms of educational objective and method, and the central role of the faculty has been extensively articulated. But surprisingly little consideration has been given until recently to the proper relationship between students and the rest of the university apparatus. Students, as the "consumers" of the educational product, have now begun to assert their right to be heard in the process through which university decisions relating to educational policy and other matters affecting students are in fact made. It is time to view the matter, in the phrase of the late Edmond Cahn, from the "consumer perspective."

Fundamental questions about higher education are now being re-examined, or in some cases are being asked for the first time. The root causes of this new inquiry appear to be three: (1) The bigness of modern universities has too often produced a bureaucratization of the educational process that many students regard as stifling to free intellectual inquiry. (2) The "silent generation" of the 1950's has given way to student activism in the 1960's. The prevailing student mood is one of general dissatisfaction with the world around them. In a society that puts a premium on education generally, and a higher premium on higher education in particular, university students are older,

generally mature, and impatient to be at the task of remaking the world The corner of the world in which they find themselves, that of higher education, is manifestly imperfect. The entirely natural reaction is to seek reform within that arena and as well to use that enclave of relative freedom as a base from which to strike out at other perceived ills of the surrounding society. Whether the complaint is against the slowness of the forward movement in civil rights, ineffectual solutions to problems of poverty and urban blight, or issues of war and peace, the not uncommon tendency is to attack all symbols of authority, whether within the university system or external to it. (3) The sometimes inadequate response within the university hierarchy to the pressures of responsible members of the student body has sometimes made it possible for less responsible elements to turn to their demagogic advantage this seeming reluctance of the university to consider the views of its students. When students see that faculty members have moved effectively to protect their own positions in terms of tenure, freedom of inquiry and association, and right to participate in the university decison-making process, while failing to assure similar rights for students, complaints against the system come readily.

With remarkable swiftness all these dissatisfactions have coalesced during the 1960's into a sense of student frustration and unrest that has erupted on many campuses into demonstrations, protests, disruption of university programs and activities, and even violence. Changes in attitude and response that would ordinarily occur only over a period of many years have transpired almost overnight. Whole generations of development in student-university relations have been collapsed into a few swift-moving years. Rethinking of university attitudes and more imaginative response to these deeply held convictions are clearly necessary.

Chapter Two

The Student as a Member of the University Community

What thinking there has been in the academic community about the relationship of students to the university has primarily centered on theories that no longer seem relevant. The poverty of the concepts is nowhere more apparent than in the area of student conduct and discipline. The theories that have so far prevailed, but whose relevance is now open to serious doubt, can be identified under three categories, although they are not mutually exclusive.

1. *In Loco Parentis.* Only the most unaware institution of higher education would now assert that its students come to it with an understanding that the university is to act as surrogate for the natural parents. This paternalistic notion of higher education, dating from a period when colleges were smaller than today and their students younger and less mature than at present, is no longer tolerable. Universities are not equipped to play the substitute parent, and students are not interested in moving from one home discipline to another. Yet paternalism persists in less obvious ways at nearly all universities.

Closely related to the notion of the university as the substitute parent is the concept that university discipline procedures are part of the learning process. This is perhaps understandable in connection with the counseling and guidance function by which students who have violated accepted mores of student conduct are "reintegrated" into the university community without any recorded sanction. But the "educational" value of dismissal, suspension, or even probation for non-academic offenses is by no means apparent. Whatever is entered on a student's permanent record will always require explanation which may not be readily persuasive outside the academic community. Expulsion is particularly difficult

to justify in terms of educational content. In a world where higher education is increasingly important to occupational success, expulsion presents serious economic and social problems for the disciplined student. A better rationale must be found than the notion that discipline is part of the learning process and thus good for students.

2. *Ex Contractu.* The most common refuge of university administrators in justification of student discipline for violation of vaguely stated norms of conduct without hearing is that the right to impose such sanctions was secured by contract entered into by each student upon registration at the university. The argument is not without appeal, so long as the assumption holds that each university is free to reject students at will, accepting only those who agree to relinquish to the university, for example, "the discretionary right to suspend or dismiss any student from the University for failure to maintain acceptable personal behavior."

For many years, the courts accepted without question the power of universities to impose such conditions upon the right or privilege of enrollment. The language commonly employed was an adaptation of that upheld as the basis for dismissal of a student without hearing or stated reason in *Anthony v. Syracuse University*, 224 App. Div. 487, 231 N.Y. Supp. 435 (1928). The "contract" language was the following:

> Attendance at the university is a privilege and not a right. In order to safeguard those ideals of scholarship and that moral atmosphere which are the very purpose of its founding and maintenance, the university reserves the right and the student concedes to the university the right to require the withdrawal of any student at any time for any reason deemed sufficient to it, and no reason for requiring such withdrawal need be given.

Presumably, a state or municipal university could no longer dismiss a student in reliance on such a statement without hearing or stated reasons; the due process clause of the fourteenth amendment could be invoked to restrain such arbitrary action. Courts reject the notion that attendance at a public institution can be conditioned on the waiver of constitutional rights. *See, e.g., Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961). It may also be doubtful whether the public-private distinction will long shelter dismissals

even in private universities without notice of charges and without hearing simply because a statement in the university bulletin (or even on a signed registration form) says so. It is entirely possible that private universities, all of which to some extent share in federal and state largess, will, at least for this purpose, be treated as though public and thus required to satisfy minimum standards of fairness in dismissal proceedings. *See* Dorsen, "Racial Discrimination in 'Private' Schools," 9 *William and Mary L. Rev.* 39 (1967); Nelkin, "Cy Pres and the Fourteenth Amendment: A Discriminating Look at Very Private Schools and Not So Charitable Trusts," 56 *Georgetown L.J.* 272 (1967); Van Alstyne, "Student Academic Freedom and the Rule-Making Powers of Public Universities," 2 *Law in Transition Q.* 1 (1965). Moreover, even apart from this argument, courts are increasingly likely to regard such contracts of adhesion as not truly voluntary and thus not binding. *See* Kessler, "Contracts of Adhesion—Some Thoughts About Freedom of Contract," 43 *Colum. L. Rev.* 629 (1943); Note, "Private Government on the Campus—Judicial Review of University Expulsions," 72 *Yale L.J.* 1362, 1378 (1963).

Whatever last-resort defense of arbitrary procedures may still be available as a matter of law, it seems clear that no university should now demand that last pound of flesh at the price of real or seeming unfairness. Rather the university obligation should be to identify with as much particularity as possible the kind of conduct expected of students, the sanctions that could be imposed for violation of that standard, and the procedures by which the fact of violation and the measure of any penalty would be assessed.

3. *Fiduciary Concept.* Warren Seavey, who was one of the first to demand fair discipline procedures for students, suggested an analogy from another field of law. He defined the fiduciary concept, borrowed from the law of trusts, as follows:

> A fiduciary is one whose function it is to act for the benefit of another as to matters relevant to the relation between them. Since schools exist primarily for the education of their students, it is obvious that professors and administrators act in a fiduciary capacity with reference to the students. One of the duties of the fiduciary is to make full disclosure of all relevant facts in any transaction between them. . . . The dismissal of a student comes within this rule. Seavey, "Dismissal of Students: 'Due Process,'" 70 *Harv. L. Rev.* 1406, 1407 n.3 (1957). *See also* Goldman, "The University

and the Liberty of its Students—A Fiduciary Theory," 54 *Ky. L.J.* 643 (1966).

The fiduciary concept as thus formulated represents a notable advance over the two tests above outlined, for it at least requires notice and hearing before dismissal. However, it may well not prove adequate to answer all the questions that today press for solution. Its semantic artificiality invites further search for more rational bases for university imposition of codes of conduct and fair procedures for their enforcement.

A RATIONALE FOR STUDENT DISCIPLINE

If the university purpose is to promote the pursuit of truth and the advancement of knowledge in a setting where freedom of inquiry is assured, no more is needed than to develop an atmosphere to advance that purpose and to forbid, as specifically as possible, only that which is likely to impede accomplishment of the grand design. A limited list of proscriptions defined with some particularity is thus the first step. When this is achieved, there remains only the necessity of setting forth procedures to assure fairness in finding the fact of violation, if any, and in determining sanctions appropriate to the academic situation.

It may be wise to recall how strict we once were with schoolmasters even before there was a fourteenth amendment. In *Lander v. Sears*, 32 Vt. 114, 121 (1860), for example, the court held that the only extra-classroom behavior which the schoolmaster could regulate was that which had a direct and immediate effect on the classroom or on the student-teacher relationship. Furthermore, the limits on the application of corporal punishment were rather strictly drawn. *See* Note, 72 *Yale L.J.* 1362, 1395 (1963). The reasonableness of student discipline, it seems, was once judged with respect to its relation to the academic *function.* It should be again.

University discipline must be limited to instances of student misconduct which distinctly and adversely affect the university's pursuit of its recognized educational purposes. The relevant considerations, here summarized, are more fully developed in part III below (Student Rights and Responsibilities).

1. Assurance of opportunity for students to achieve their educational objectives, from admission to the university without

discrimination through the time of entry into the outside community;

2. Generation and maintenance of an intellectual and educational atmosphere throughout the university;

3. Protection of the safety, welfare, and property of all members of the university community and of the university itself.

A final indispensable ingredient to the student disciplinary process is that the university must demonstrate its absolute commitment to the search for truth in its fact-finding procedures. A dispassionate hearing upon due notice to the parties is essential to such a concern, whether the university is private or public.

This inquiry is addressed to the development of standards and procedures that meet these tests. But first, and not as a detour, it is necessary to examine the question of student rights and student responsibilities in the modern university context.

Chapter Three

Student Rights and Responsibilities

A. Student Rights

If the university is to succeed in its pursuit of truth and dissemination of knowledge in a setting where freedom of inquiry flourishes, the university must provide an institutional framework that encourages debate and freedom of intellectual endeavor without fear of consequences.

The point is well stated by the University of California (Berkeley) Study Commission on University Governance in its 1968 Report (p. 8):

> We recognize that a university cannot give an education to its students, let alone impose it upon them. We believe, however, that it should awaken the complacent and provide a liberating but demanding milieu in which the uncertain and aimless have a fair chance to develop intellectual autonomy.

The university is in a real sense a laboratory in which the participants—faculty, students, and administrators—unite in their mutual search for intellectual growth. This necessarily means experimentation with new and untried theories and systems. It requires the articulation of views at the frontier of thought which may seem heretical to the majority when offered and may indeed never gain acceptance. But these experiments, and these testings of sentiment, must not be restricted by artificial or arbitrary rules that would be stifling in the university context, no matter how appropriate they might be in the more conventional world outside. In short, academic freedom in the fullest sense of the expression is indispensable to the existence of the university.

1. *Freedom in the Classroom.* Freedom of discussion and expression of views must be encouraged and protected. It is the

responsibility of the professor in the classroom and in conference to ensure the realization not only of the fact but the spirit of free inquiry. In particular, students must be protected against prejudiced or capricious academic evaluation.

Commentary. The professor has the responsibility to maintain order, but his authority must not be used to inhibit the expression of views contrary to his own.

It is not inconsistent with freedom of the classroom for the professor to require participation in classroom discussion and submission of written exercises.

Information about student views, beliefs, and political associations acquired by professors in the course of their work as instructors and advisers is confidential and must not be disclosed to others. Ordinarily, however, questions relating to intellectual or skills capacity do not threaten the right of academic privacy. (For discussion of other aspects of academic privacy, see part III (A) (7) below.)

2. *Freedom of Association.* Organizations may be established within the university for any legal purpose whether the aims are religious, political, educational, economic, or social. Affiliation with an extramural organization shall not disqualify the university-based branch or chapter from university privileges. Membership in all university-related organizations shall be open to any member of the university community who is willing to subscribe to the stated aims of the organization and to meet its stated obligations.

University interest in the existence and objectives of organizations within the university community is limited to the following matters.

a. *Associational Identification.* The university may not require membership lists of any organization; but it may require, as a condition of access to university funds, the names and addresses of officers.

Commentary. Ordinarily an organization will wish to maintain a current list of members so that determination of questions of policy can be limited to those who meet the conditions of eligibility to vote. But the university has no identifiable interest in membership lists.

Similarly, an organization may find it advantageous to have a faculty adviser. But the university need not concern itself with that decision unless a faculty representative is essen-

tial in connection with the allocation of funds, as discussed in the commentary to paragraph c below.

b. *Use of Facilities.* University facilities shall be assigned to student organizations for regular business meetings, social functions, and for programs open to the public. Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of the space assigned, time of use, and to insure proper maintenance of the facilities. Subject to the same limitations, university facilities should be made available for assignment to individuals or groups within the university community, even though not formally organized; but preference may be given to programs designed for audiences consisting primarily of members of the university community.

Commentary. Allocation of space should be made on the basis of time priority of requests and the demonstrated needs of the individual, group, or organization. The assignment function may be delegated to an administrative official or to a student committee on organizations.

Physical abuse of assigned facilities may result in limitation of future allocation of space to offending parties. Charges may be imposed for damage or any unusual costs for use of facilities.

The individual, group, or organization requesting space may be required to state the general purpose of any meeting open to persons other than members and the names of outside speakers invited for any meeting. If it is anticipated that the audience for any meeting will consist primarily of persons outside the university community, or if any charge or collection of funds is contemplated, advance permission from the party given authority to make space allocations may be required.

c. *Allocation of Funds.* The authority to allocate university funds budgeted for use by recognized student organizations (including money derived in whole or in part from university fees) should be delegated to a body in which student participation in the decisional process is assured. Approval of requests for funds may be conditioned upon submission of budgets to, and approval by, the body authorized to allocate funds.

Where funds are allocated to a student organization, financial accountability may be required, including statement of income and

expenses on a regular basis. Apart from the responsibility to account for expenditures in relation to the approved budget, student organizations should have independent control over the expenditure of funds allocated.

Commentary. If student organizations are to have a significant function, there must be some assured means of securing funds for the attainment of organizational objectives and freedom of student choice among alternative routes to those ends. Accordingly, student organizations should not be required to have faculty advisers with power of veto over budgets and individual expenditures. But there should be no objection to a requirement that each student organization that seeks access to university funds choose one member of the faculty to act as consultant on university relations, including matters of budget and expenditures.

d. *Use of the University Name.* No individual, group, or organization may use the university name without express authorization except to identify the university affiliation of the individual, group, or organization. University approval or disapproval of any policy or position may not be stated or implied by any individual, group, or organization.

3. *Freedom of Publication.* The student press must be free of censorship, and its editors and managers must be protected from arbitrary suspension arising out of student, faculty, administration, alumni, or community disapproval of editorial policy or content. Similar freedom must be assured for the oral statement of views on a university-controlled radio or television station.

The tenure of editors and managers should be determined by the regularly elected student editorial boards. Removal before the normal expiration of the term of office may be made only by the same bodies in accordance with fair and orderly procedures prescribed in advance.

Commentary. In the delegation of editorial responsibility to students the university must provide editorial freedom and, to the extent possible, financial autonomy so that the student press (including radio and television) may develop and maintain its integrity of purpose as a vehicle for free inquiry and free expression in the academic community. Whenever possible, student publications should be separately incorporated. Where financial and legal autonomy is not possible, the university as publisher may have to bear legal responsibility for

the content of such publications. The editorial freedom thus assured student editors and managers entails corollary obligations under the canons of responsible journalism and applicable regulations of the Federal Communications Commission.

4. *Freedom of Protest.* The right of peaceful protest within the university community must be preserved. The university retains the right to assure the safety of individuals, the protection of property, and the continuity of the educational process.

Commentary. Times of turbulence and student unrest require special forbearance on the part of university officials in tolerance of demonstrations and protests in opposition to university policy. Even when the subject of the demonstration or protest is not clearly relevant to the educational process or to university functions, the university must be at least as hospitable to this form of expression of opinion as would the outside community where inconvenience and even some interruption of normal activity are accepted as the price paid for freedom of expression.

a. *Picketing and External Access to University Buildings.* Orderly picketing and other forms of peaceful protest are protected activities on university premises in the absence of interference with free passage through areas where members of the university community have a right to be.

Commentary. Interference with ingress to and egress from university facilities, interruption of classes, or damage to property exceeds permissible limits. When a university facility abuts a public street, student activity, although on public property, may unreasonably interfere with ingress to and egress from university buildings. Even though remedies might be available through local enforcement bodies, the university may, in rare instances, choose instead to impose its own disciplinary sanctions.

b. *Control of University Buildings.* Peaceful picketing and other orderly demonstrations are permitted in public areas of university buildings, including corridors outside auditoriums and other places set aside for public meetings.

Commentary. Where university space is in use for an authorized university function, whether conduct of a class, a public or private meeting under approved sponsorship, normal administrative functions, or service-related activities, (*e.g.*,

health services, recreational activities, or personnel placement), respect must be accorded any reasonable regulations imposed by the person in charge. That is, any requirement to desist from specified activities or to leave the premises must be obeyed unless manifestly unreasonable or outside the scope of authority of the person issuing the requirement. Examples may be helpful.

(1). Leaflets, including those without identification as to source, may be distributed in public corridors of university buildings; and notices may be posted on designated bulletin boards. But distribution of leaflets and posting of notices in the classroom may be forbidden by the professor in charge.

(2). On-campus recruitment of students for lawful employment is an appropriate adjunct of the educational process. University participation in the placement process is a service function commonly assumed by the university in satisfaction of the wishes of the great majority of its students. So long as any recruitment is permitted on campus, any private or governmental organization which is not illegal under federal, state, or local law, shall be given an opportunity to recruit students on campus provided that there are students interested in working for such an organization.

Every student enrolled in the university has the right to be interviewed on campus by any legal organization which desires to recruit at the campus. Any student or group of students has the right to protest against the appearance on campus of any organization provided that the protest does not interfere with any other student's opportunity to have such an interview.

5. *Student Participation in the Decision-Making Process.* As constituents of the academic community students must be free, individually and collectively, to express their views on issues of institutional policy and on matters of general interest to the student body. There must be clearly defined means for student participation in the formulation and application of institutional policy affecting academic and student affairs.

Commentary. The decisional process within the university is not by any means unitary. While the modern university continues to have as its principal concern the health and vigor of the educational process, it also serves in a number of

ancillary capacities. The university as landlord, restaurateur, purveyor of health services and recreational facilities, or as bookseller is quite different from the university as manager of the educational enterprise. It is nonetheless proper to urge that student participation appropriate to each of these activities must be made available. It is not possible here to spell out with particularity all the degrees of student involvement that may be developed for varying needs. Some guidelines, are, however, possible.

a. The role of student government and its responsibilities should be made explicit, and action taken by student government within the areas of its jurisdiction should be final to the maximum extent possible. In any event, there should be no university review of student government decisions unless the review procedures are agreed upon in advance.

Ways must be found to increase general student interest and participation in the procedures for selection and supervision of student government. Only through wider participation in the student democratic process is it possible to justify the more responsible role here recommended for student government.

b. Where the university acts as landlord, the students should ordinarily have final authority to make all decisions affecting their personal life, including the imposition of sanctions for violation of the stated norms of conduct. (For a more complete discussion, see part III (A) (7) below.)

c. In the area of educational policy professional judgment is obviously relevant. Students, in comparison with faculty and administrators, are relatively disadvantaged in experience, professional judgment, and continuity of service with the university. Even though the power of final decision for degree requirements, course grades, and the assignment of teachers cannot be made on the basis of "one man, one vote," the infusion of responsible student advice must inevitably improve the quality of educational policy decisions, particularly in providing improved means for evaluation of the educational program. As the Berkeley Study Commission on University Governance observed (page 33):

> Incorporating students into academic policy-making is essential if today's large university is to create an environment which more successfully promotes the realiza-

tion of its still unfilled educational ideals. The preeminent argument for achieving greater student participation in the shaping of educational policy thus springs from our long-range educational ambitions and our apprehension about the wide gap presently separating our educational performance from the desirable goal of deeply involving students in the direction of their education.

In all these respects the university should be constantly alert for new and improved methods to increase student participation in the decisional process. Among the devices that should be considered are the following:

a. Increased autonomy in student organizations, including financial responsibility for the expenditure of budgeted funds.

b. Creation of faculty-student committees to consider questions of policy affecting student life. Student representatives on such bodies should ordinarily be elected by their fellows.

c. Designation of students as members of standing and special committees concerned with questions of curriculum and other matters of direct student concern.

d. Designation of a faculty member as ombudsman with power to hear and investigate complaints and to recommend remedial action where appropriate.

e. Conduct of a faculty evaluation survey. Careful attention must be given to the quality of the questionnaire and to the distribution of the results. Ordinarily it is satisfactory to make the results available only to the individual evaluated and to the dean of the college; but wider distribution is possible if approved by the faculty in advance of the evaluation.

6. *Violation of Law and University Discipline.* If a university student is charged with an off-campus violation of law, the matter should be of no disciplinary concern to the university unless the student is incarcerated and unable to comply with academic requirements.

If the violation of law occurs on campus and is also a violation of a published university regulation, the university may institute its own proceedings against the offender if the university interest involved is clearly distinct from that of the community outside the university.

Commentary. Where students are accused of causing damage to property or inflicting injury to persons off campus, whether in collegiate exuberance or as part of a calculated plan of criminal conduct, the university has no proper concern beyond assuring fair treatment for the offender and providing assistance in the securing of counsel or bail where necessary. But no university disciplinary action for the criminal act is appropriate unless, in the remarkable exception, legitimate university interests are implicated.

Student conduct on campus subject to university discipline may also be a violation of law. The duality of violation is technically irrelevant to the right of the university to apply its own discipline procedures. For the university and civil authorities to impose concurrent sanctions upon such conduct is not double jeopardy in the constitutional sense, nor does it necessarily offend any popular sense of fair play. For example, theft of property in a university residence hall might involve dismissal from the hall, perhaps dismissal from the university, and a criminal penalty as well. However, the university should in no case proceed with a university sanction that in fact or appearance duplicates punishment for the same offense. Unless the interests of the university are implicated in some separate way by the violation of law, prosecution by the civil authorities should ordinarily suffice.

Thus, the likelihood of criminal penalties, even though not necessarily determinative of the university's right to impose its own sanctions, may well persuade the university not to impose punishment within the university community as well. The following guidelines are suggested:

a. Ordinarily, the university should not impose sanctions if public prosecution of a student is anticipated or after law enforcement officials have disposed of the case.

b. Exceptionally, the university may impose sanctions for grave misconduct demonstrating flagrant disregard for the rights of others. Such conduct calls into question the student's membership in the educational community, either because he has grossly violated elementary standards of behavior requisite to the maintenance of the educational community or because his continued presence would adversely affect the ability of others to pursue their educational goals.

c. Where a student is charged with violation of law because of activities on or off campus, university officials should apprise the student of sources of legal counsel.

7. *Privacy Rights.* The university must protect the interest of its students in preservation of the right of privacy.

Commentary. In the increasingly complex and urbanized world of today privacy rights are valued ever more highly as they become ever more elusive. The problem is especially acute in educational institutions where most students willingly accede to the pressures of conformity while the few who reject the uniformity of the academic community, whether in terms of ideology or appearance, are sometimes singled out for official disapproval. Hopefully, it is not too late to restore the traditional academic respect for differences of ideas and manner. Respect should be assured for the right of the individual to immerse himself in the lonely pursuit of intellectual or scientific inquiry without regard to where it may lead. There is, after all, something to be said in favor of the isolation—the privacy—of the ivory tower.

a. *Matters of Private Morality.* The university should not regard itself as the arbiter or the enforcer of the morals of its students. Accordingly, it should not inquire into the activities of its students away from the campus where their behavior is subject to regulation and control by the public authorities. Social morality on campus not in violation of law should be of no concern to the university.

Commentary. The privacy right cuts two ways. While the right of the nonconformist should be protected under the privacy umbrella, other individuals who define their privacy in terms of freedom from undue residence hall disturbance, for example, also deserve protection. The principal point is that actions in private that do not violate the law and do not intrude on the rights of others should be guaranteed against official intrusion.

b. *Entry into and Search of Residence Hall Rooms.* The right of privacy for students in residence hall living is a value that must be protected. The following principles are relevant.

(1). Nothing in the university relationship or residence hall contract should expressly or impliedly give the university or resi-

dence hall officials the authority to consent to a search of a student's room by police or other government officials.

Commentary. Acting as a private landlord or hotel keeper the university has no general authority to consent to a police search without a warrant authorized by law. *Chapman v. United States,* 365 U.S. 610 (1960); *Stoner v. California,* 376 U.S. 473 (1963). This is true even in a hotel in which a key is retained by the clerk with an implied authority for maids, janitors, and repairmen to enter. *Stoner v. California, supra.* A lessor is not regarded as the agent of the occupant for the purpose of giving consent to a police search unless the agency is clearly shown. *Klee v. United States,* 53 F.2d 58 (9th Cir. 1931). More recently the Supreme Court has applied the same principle to administrative searches, restricting the entry of building or fire inspectors (in nonemergency situations) without a search warrant in the absence of consent by the occupant. *Camara v. Municipal Court,* 387 U.S. 523 (1967); *See v. Seattle,* 387 U.S. 541 (1967).

The foregoing principles of general constitutional doctrine provide an appropriate model for the university as landlord in relation to nonuniversity officials. It would scarcely be in keeping with the *Camara* and *See* decisions, *supra,* for the university as landlord to curtail student rights by imposing a clause giving the owner rather than the occupant the authority to consent to governmental searches. Even if there are legitimate educational interests that justify unconsented access to residence hall rooms by the university itself (see paragraph (2) below), it does not at all follow that any educational purpose would be served by allowing the university, in the absence of an emergency, to consent to a police or administrative search without a warrant.

(2). Where the university or its representative seeks access to a student room to determine compliance or not with the provisions of applicable law relating to multiple dwelling units, the occupant should be notified of such planned entry not less than twenty-four hours in advance, and the occupant should be permitted to be present. Where entry is sought to make improvement or repairs, notice should be given the occupant not less than seven days in advance. In emergency circumstances where imminent danger to life, safety, health, or property is reasonably feared, entry should be allowed without advance notice. In all

cases involving suspected violation of residence hall regulations, entry should be permitted only upon the securing of an administrative warrant from the body in that hall responsible for the adjudication of violations of its regulations.

c. *Confidentiality of Records.* Respect must be accorded the essentially confidential relationship between the university and its students by preserving to the maximum extent possible the privacy of all records relating to each student. Controlling principles are listed below.

Commentary. Academic freedom and privacy rights intersect and reinforce each other in the sensitive area of academic record-keeping and in the determination of what information may be disclosed within and outside the academic community. The professional relation between teacher and student, somewhat like that between lawyer and client or physician and patient, presupposes, at least within certain limits, privacy of communication. Similarly, the relation between the university and its students presupposes that records will be kept only of matters relevant to the educational process and that even those minimal records will not be disclosed except with the student's consent or in carefully circumscribed instances based upon clearly defined policy.

(1). The official student academic record, supporting documents, and other student files are confidential. They are to be maintained only by full-time members of the university staff employed for that purpose.

(2). Separate files shall be maintained, as follows:

(a). Academic records, supporting documents, and general educational records.

(b). Records of discipline proceedings.

(c). Medical and psychiatric records.

(d). Financial aid records.

(3). No entry shall be made on a student's academic record, and no document shall be placed in a student's file without actual notice to the student. Publication of grades and announcement of honors shall be deemed actual notice. Any student wishing to challenge the accuracy of any entry in his record or the presence of any item in his file may bring the equivalent of an equitable action against the appropriate administrator before the judicial body to which the student would be responsible if charged with violation of university regulations.

(4). Each student shall have access to his records and files subject only to reasonable regulation as to time, place, and supervision.

(5). Information relating in any way to any of the following categories is not relevant to the educational process. Accordingly, no record shall be made in relation to any such matter except upon the express written request of the student in question.

(a). Race.

(b). Religion.

(c). Political or social views.

(d). Membership in any organization other than honorary and professional organizations directly related to the educational process.

(6). Except with the prior written consent of the student concerned, or as stated below, no information in any student file may be released to any individual or organization.

(a). Record-keeping personnel may have access to student records and files only as stated in paragraph (1) above.

(b). Members of the faculty with administrative assignments may have access to records and files for internal educational purposes, as well as for routinely necessary administrative and statistical purposes. Access to financial, medical, and disciplinary records is limited to the officials responsible for those matters. No one having access under this paragraph may disclose information beyond that listed in (c) or (d) below.

(c). The following information may be given any inquirer, and is the only information to be released in response to a telephone inquiry: (i) school or division of enrollment; (ii) periods of enrollment; and (iii) degree awarded, honors, major field, and date. In addition to the above, a student's address, telephone number, date of birth, and signature may be confirmed if the inquiry is made in person or by mail. Different or further information may not be given in the event that the inquirer's information is incomplete or incorrect.

(d). Properly identified officials from federal, state, and local agencies may be given the following information if expressly requested: (i) school or division of enrollment; (ii) periods of enrollment; (iii) degree awarded, honors, major field, and date; (iv) nature of academic record in general, *i.e.*, excellent, good, fair (not specific grades); (v) address; (vi) verifica-

tion of signature; and (vii) name and address of parent or guardian.

(e). Under no circumstances may any person making an inquiry be given personal access to any student file.

(7). No record shall be preserved beyond graduation or other final departure from the university of any student except as follows:

(a). The academic record may be retained subject to the limitations on disclosure above stated.

(b). Financial records may be retained so long as any obligation to the university continues.

(c). Medical and psychiatric records may be retained subject to the limitations on disclosure imposed by the normal rules for privileged information.

B. STUDENT RESPONSIBILITIES

This discussion will consist of two parts: first, a brief definition of the range and scale of sanctions available to the disciplinary authority within a university; and second, an outline of the activities limited or forbidden to students, for violations of which a disciplinary sanction may be imposed.

Three preliminary observations should be noted.

First—Even where violation of a university rule is established, a sanction need not in every case be imposed. Matters of extenuation should always be taken into account, along with all circumstances, in determining the sanction. No sanction should be imposed more serious than is clearly appropriate in the circumstances.

Second—The record of any student disciplinary sanction may be maintained in the files of the disciplinary body and nowhere else, except that expulsion may be recorded on the permanent record. (As to the confidentiality of student records, see paragraph 6(c) in section A above.)

Third—Sanctions imposed by the faculty for academic deficiency, including loss of privileges, probation, suspension, and dismissal, are subject to faculty regulation in compliance with generally accepted standards of academic performance. Accordingly, academic sanctions are not within the rules and procedures outlined below.

1. *Sanctions Defined.*

a. Admonition. An oral statement to the student offender that he has violated university rules.

b. Warning. Notice to the student, orally or in writing, that continuation or repetition of the conduct found wrongful, within a period of time stated in the warning, may be cause for more severe disciplinary action.

c. Censure. Written reprimand for violation of specified regulation, including the possibility of more severe disciplinary sanction in the event of conviction for the violation of any university regulation within a period of time stated in the letter of reprimand.

d. Disciplinary Probation. Exclusion from participation in privileges or extracurricular university activities as set forth in the notice of disciplinary probation for a specified period of time.

e. Restitution. Reimbursement for damage to or misappropriation of property. Reimbursement may take the form of appropriate service to repair or otherwise compensate for damages.

f. Suspension. Exclusion from classes and other privileges or activities as set forth in the notice of suspension for a definite period of time.

g. Expulsion. Termination of student status for an indefinite period. The conditions of readmission, if any is permitted, shall be stated in the order of expulsion.

2. *Proscriptions Stated.* University discipline is limited to student misconduct which adversely affects the university community's pursuit of its educational objectives, as outlined in part II above.

Misconduct for which students are subject to university discipline is defined as follows.

a. Dishonesty, such as cheating, plagiarism, or knowingly furnishing false information to the university.

b. Forgery, alteration, or use of university documents, records, or instruments of identification with intent to defraud.

c. Intentional obstruction or disruption of teaching, research, administration, disciplinary proceedings, or other university activities, including public service functions and other authorized activities on university premises.

d. Physical abuse of any person on university premises or

at university-sponsored or university-supervised functions or conduct which threatens or endangers the health or safety of any such person.

e. Theft from or damage to university premises or theft of or damage to property of a member of the university community on university premises.

f. Failure to comply with directions of university officials acting in performance of their duties. (See part III(A)(4) (Freedom of Protest).)

g. Violation of published university regulations, including regulations relating to entry and use of university facilities, and any other regulations which may from time to time be enacted.

h. Violation of published rules governing university residence halls.

i. Violation of law on university premises or in university residence halls in a way that adversely affects the university community's pursuit of its proper educational purposes, as enumerated in part II above.

Chapter Four

Rationale of Legislative and Judicial Authority

In the United States system of government the doctrine of separation of powers ordains that the legislative, executive, and judicial branches of the national government shall maintain separated functions under the supervision of different government officials. The same principle has been adopted in nearly all states. But the model is not inexorable. Many local governments in the United States, as well as many national governments in other countries have made out perfectly well with powers more or less merged. The same is true of many administrative agencies in this country. Accordingly, no compelling need should be felt to separate for all purposes the legislative, executive, and judicial aspects of the rule-making and enforcement procedures relating to student conduct in a university. At the same time, there are at some stages of the process perfectly good reasons for separating, for example, the prosecutorial function from the fact-finding and judging function. The point is only this. In the university context, where there is no higher law that either requires or forbids separation, the matter should be decided on the basis of logical implementation of the educational purposes of the institution.

At New York University ultimate authority is vested in the Board of Trustees. In practice, however, operative authority is extensively delegated. Specifically, questions of educational policy, including matters of student conduct affecting a single college only have been entrusted to the separate faculties of the fifteen colleges. In matters of student conduct affecting more than one college it is generally accepted that the University Senate has authority.

Within the above-described institutional framework the following recommendations are made in relation to the establishment of rule-making authority and of judicial capacity in relation to

matters of student conduct and discipline. All authority, however constituted, should operate to the maximum extent possible within the framework of principles outlined in this paper.

A. AUTHORITY TO MAKE AND AMEND RULES

1. *In General.* In each college the faculty has ultimate authority for establishing, amending, and publishing all rules of conduct applicable to students in that college. Students must be significantly involved in the deliberative process. Rules of conduct applicable to situations not limited to the confines of a single college or involving students from more than one college should be established, amended, and publicized by the University Senate. A meaningful consultative process with appropriately representative student groups must be devised and implemented.

2. *Parietal Rules.* In the case of a residence hall whose residents are substantially all from a single college parietal rules should be promulgated by a residence hall board chosen by the members of the hall. The board might, for example, be composed as follows: one representative from each class with members resident in the hall, elected by the members of that class resident in the hall, plus the resident master if one has been designated.

In the case of a residence hall occupied by students from more than one college parietal rules should be established by a residence hall board chosen by the members of the hall. The board might, for example, be composed as follows: one representative from each class in each college with members resident in the hall elected by members of that class resident in the hall, plus the resident master if one has been designated.

B. ENFORCEMENT PROCEDURES: THE JUDICIARY

1. *At the College Level.* Each college should establish a hearing board which might be composed as follows: Three faculty members, plus two alternates elected by the faculty, and three students, plus two alternates, elected by the students. In such a board four votes would be necessary for a decision adverse to any student.

An appeals board should be established which might be composed as follows: One student elected by his fellow students; the faculty chairman of the college executive committee (or the

nearest equivalent); and a third member to be chosen by the first two on the occasion of any appeal. The board should be empowered to affirm or dismiss and to reduce but not increase sanctions.

2. *At the Residence Hall Level.* Each residence hall should establish its own hearing board which might be composed of the resident master and two students elected by the students resident in that hall. Appeals should be to the university-wide board described below.

3. *University-wide Hearing Board.* A university-wide hearing board should be established to hear appeals from residence hall boards and to hear and decide cases arising in the university but outside the jurisdiction of a single college and cases involving students from more than one college. The appeal board might be composed as follows: One member of each faculty, elected by his colleagues, and one student from each college, elected by his fellow-students. An administrative chairman of the board could then be elected from among the board members. He should be charged with setting cases for hearing and choosing a panel of three faculty members and three students to hear each case set for initial hearing or for review on appeal. Panelists should be rotated as far as possible. In such a board four votes would be necessary for a decision adverse to any student. The board should be empowered to affirm or dismiss and to reduce but not increase sanctions.

C. RULES OF PROCEDURE FOR DISCIPLINE PROCEEDINGS

The procedures outlined below are directed to the hearing boards in the individual colleges. With minor adaptation these rules could be made applicable for the university-wide hearing board in its fact-finding hearings and for hearings before residence hall boards.

1. *Initiation of Disciplinary Proceedings.*

a. Any academic or administrative official of the university, any member of the faculty, or any student of the university may file charges against any student of the college for misconduct. The charges shall be filed with the dean of the college. In extraordinary circumstances, the dean may suspend the student pending consideration of the case.

b. The dean shall cause a preliminary investigation to be made for the purpose of ascertaining whether the charges may be disposed of informally without initiation of disciplinary proceedings. The student against whom the charges have been brought may at his request have the assistance of a faculty adviser at the time of such preliminary examination.

c. If the dean determines that the alleged misconduct requires the institution of disciplinary proceedings under these rules, he shall send by certified or registered mail written copies of the charges, together with notice of the institution of proceedings and a copy of applicable procedures, to the student charged with misconduct. A copy of the charges shall also be delivered to the chairman of the hearing board.

d. Within fifteen days after receipt of the charges and notice by the student against whom the charges are made, he shall respond in writing to the chairman of the hearing board if he wishes to oppose the charge. The chairman of the board may extend the time for such response.

e. Within fifteen days after submission of the charges and response, the chairman of the hearing board shall set a time for the hearing, which shall be fixed not more than thirty days later, unless an extension is granted by the chairman.

2. *Conduct of Hearings.*

a. A calendar of the hearings in a disciplinary proceeding shall be fixed by the chairman of the hearing board after consultation with parties to the proceeding. The presiding officer shall have discretion to alter the calendar for good cause.

b. The hearings shall be conducted in such manner as to do substantial justice and shall not be unduly restricted by the rules of procedure or evidence.

c. The hearing shall be private if requested by the student charged. In hearings involving more than one student, in which one or more students, but not all, requests a private hearing, severance shall be allowed upon request.

d. On behalf of the college the charges and evidence shall be presented by a person designated by the dean of the college. The person so designated may have the aid of counsel or an adviser.

e. A student charged with misconduct also has the right to be represented by counsel or an adviser. He may be a member of the faculty or an individual from outside the college.

f. The board may address questions to any party to the proceedings or to any witness called by the parties or by the board. Any party may request the privilege of presenting witnesses, subject to the right of cross-examination by other parties. The chairman may in his discretion limit the number of witnesses to be heard. The board may also require the production of records or other exhibits.

g. A verbatim record shall be made of all proceedings at the hearings except that on order of the chairman procedural matters may be discussed in executive session, and in such event the minutes need not be included in the verbatim record of the hearings. This record shall be available under the supervision of the chairman to all parties to the hearings.

h. The chairman shall determine, after consultation with the parties to the proceedings and their counsel or advisers, whether a summation of one or more aspects of the case would be useful to the board, and if so, how such a summation shall be presented.

i. No recommendation for the imposition of disciplinary penalties shall be based solely upon the failure of the student charged with misconduct to answer the charges or appear at the hearing. In any such case, the evidence in support of the charges shall be presented and considered.

j. The board shall make a report to the dean of the college and to the parties to the hearing, consisting of (1) a verbatim record of the hearing including a statement of the charges and the evidence presented; and (2) the decision of the board and reasons therefor.

3. *Appeals.*

a. An appeal from the decision of the hearing board may be made within thirty days to the appeal board within the college (or, in appropriate cases, to the university-wide hearing board).

b. An appeal, when taken, shall be limited to a review of the full report of the hearing board for the purpose of determining whether the board acted fairly in light of the charges and evidence presented at the hearing. The appeal board may accept the report without modification, may accept the report subject

to a specified reduction in the sanction imposed, or dismiss one or more of the charges entirely. When the hearing board's report is accepted by the appeal board, the matter shall be deemed finally decided without further recourse, except that a petition for new hearing may be made to the hearing board upon discovery of new evidence.

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